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SENATE BILL 1334 By
Cooper

HOUSE BILL 957
By Williams (Wil)

AN ACT to enact the "Tennessee Rights-of-Way
Telecommunications Providers Act of 1997" and to amend
Tennessee Code Annotated, Title 65, relative to
telecommunications providers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be cited as the "Tennessee Rights-of-Way
Telecommunications Providers Act of 1997".

SECTION 2.

(a) The general assembly finds, the following:

(1) It is the policy of this state to encourage competition among the
various telecommunications providers, to reduce the barriers to entry for those
providers, to authorize and encourage competition within the local exchange
telecommunications market, and to ensure that all consumers benefit from such
competition and expansion.

(2) All citizens should have access to a wider range of
telecommunications services at rates that are reasonably comparable within the
state, that basic service would be available and affordable to all citizens, and that
universal access to advanced telecommunications services would be available to
all consumers. Such goals are essential to the economic and social well-being of
the citizens of this state and can be accomplished only if telecommunications

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providers are allowed to develop ubiquitous, seamless statewide telecommunications networks. To require telecommunications companies to seek authority from every political subdivision within the state to conduct business is unreasonable, impractical, and unduly burdensome. In addition, the general assembly further finds and declares that since the public rights-of-way are dedicated to and held on a nonproprietary basis in trust for the use of the public, the use of these public rights-of-way by telecommunications companies is consistent with such policy and appropriate for the public good.

(b) The general assembly further finds, determines, and declares that nothing in this act shall be construed to alter or diminish the authority of political subdivisions of the state to lawfully exercise their police powers with respect to activities of telecommunications providers within their boundaries, and, subject to such reservation of authority, that:

(1) the construction, maintenance, operation, oversight, and regulation of telecommunications providers and their facilities is a matter of statewide concern and interest;

(2) telecommunications providers operating under the authority of the federal communications commission or the Tennessee Regulatory Agency, require no additional authorization or franchise by any municipality or other political subdivision of the state to conduct business within a given geographic area and that no such political subdivision has jurisdiction to regulate telecommunications providers based upon the content, nature, or type of telecommunications service or signal they provide except to the extent granted by federal or state legislation;

(3) telecommunications providers have a right to occupy and utilize the public rights-of-way for the efficient conduct of their business;

(4) access to rights-of-way and oversight of that access must be competitively neutral, and no telecommunications provider should enjoy any competitive advantage or suffer a competitive disadvantage by virtue of a selective or discriminatory exercise of the police power by a local government.

(c) The general assembly further finds that, in providing for nondiscriminatory and cost-based access to public rights-of way by telecommunications providers, cost-based pricing may increase or diminish the level of public revenues available to political subdivision, depending upon existing right-of-way agreements and policies. Nothing in this act shall be construed to prohibit the state or its political subdivisions from responding to such revenue changes by adopting offsetting or other appropriate tax policies authorized under the existing laws of Tennessee and not otherwise inconsistent with this act.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasimunicipal, or public corporation organized pursuant to law.

(2) "Public highway" or "highway" for purposes of this article includes all roads, streets, and alleys and all other dedicated rights-of-way and utility easements of the state or any of its political subdivisions, whether located within the boundaries of a political subdivision or otherwise.

(3) "Telecommunications provider" or "provider" means a person that provides telecommunications service, with the exception of cable services as defined by section 602(5) of the federal "Cable Communications Policy Act of 1984," 47 U.S.C. Sec.522(c), pursuant to authority granted by the Tennessee Regulatory Authority of this state or by

the federal communications commission. "Telecommunications provider" or "provider" does not mean a person or business using antennas, support towers, equipment, and buildings used to transmit high power over-the-air broadcast of AM and FM radio, VHF and UHF television, and advanced television services, including high definition television. The term "telecommunications provider" is synonymous with "telecommunication provider."

SECTION 4.

(a) Any domestic or foreign telecommunications provider authorized to do business under the laws of this state shall have the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities along, across, upon, and under any public highway in this state, subject to the provisions of this act; and the construction, maintenance, operation, and regulation of such facilities including the right to occupy and utilize the public rights-of-way, by telecommunications providers are hereby declared to be matters of statewide concern. Such facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel on such highway.

(b) No political subdivision shall discriminate among or grant a preference to competing telecommunications providers in the issuance of permits or the passage of any ordinance for the use of its rights-of-way or create or erect any unreasonable requirements for access to the right of way, nor create or erect any unreasonable requirements for entry to the right-of-way for such providers.

(c) No political subdivision shall regulate telecommunications providers based upon the content or type of signals that are carried or capable of being carried over the provider's facilities.

SECTION 5.

(a)(1) Nothing in this article shall be construed to authorize any telecommunications provider to erect any poles or construct any conduit, cable, switch, or related appurtenances and facilities along, through, in, upon, under, or over any public highway within a political subdivision without first obtaining the consent of the authorities having power to give the consent of such political subdivision.

(2) A telecommunications provider that, on or before the effective date of this section, either has obtained consent of the political subdivision having power to give such consent or is lawfully occupying a public highway in a political subdivision shall not be required to apply for additional or continued consent of such political subdivision under this section.

(b) Consent for the use of a public highway within a political subdivision shall be based upon a lawful exercise of the police power of such political subdivision and shall not be unreasonably withheld, nor shall any preference or disadvantage be created through the granting or withholding of such consent.

SECTION 6.

(a) No municipally-owned utility or cooperatively-owned utility shall request or receive from a telecommunications provider or a cable television provider as defined in section 602(5) of the federal "Cable Policy Act of 1984," in exchange for permission to attach telecommunications devices to poles, any payment in excess of the amount that would be authorized if the municipally-owned or cooperative-owned utility were regulated pursuant to 47 U.S.C. Sec. 224, as amended.

(b) No municipality or cooperative shall request or receive from a telecommunications provider, in exchange for or as a condition upon a grant of permission to attach telecommunications devices to poles, any in-kind payment.

SECTION 7.

(a) No political subdivision shall levy a tax, fee or charge for any right or privilege of providing telecommunications services or for the use of a public right of way to provide telecommunication services other than:

(1) A street or public highway construction permit fee, to the extent that such permit fee applies to all persons seeking such a construction permit.

(2) All fees and charges levied by a political subdivision shall not exceed the reasonable costs incurred by the political subdivision in providing those services, shall not be levied for general revenue purposes, shall be competitively neutral, shall be applied in a nondiscriminatory manner, and shall be reasonably related in time to the occurrence of such costs. In any controversy concerning the appropriateness of a fee or charge, the political subdivision shall have the burden of proving that the fee or charge is reasonably related to the direct costs incurred by the political subdivision. All directly assignable costs of construction and restoration of the affected road surfaces shall be borne by the telecommunications provider.

(b) Fees and charges imposed shall not be collected through the provision of in-kind services by telecommunications providers, nor shall any political subdivision require the provision of in-kind services as a condition of consent to use a highway.

(c) The terms of all agreements between political subdivisions and telecommunications providers regarding the use of highways shall be matters of public record and shall be made available upon request.

SECTION 8. Nothing in this act shall be construed to authorize any person, partnership, association, corporation, or city or town to erect any poles, construct any electric light power line, or extend any wires or lines along, through, in, upon, under, or over any streets or alleys of any city or incorporated town without first obtaining the consent of the municipal authorities having power to give the consent of such city or incorporated town.

SECTION 9. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purpose of this act.

SECTION 10 . This act shall take effect upon becoming a law the public welfare requiring it.